

MT LEGISLATIVE HISTORY

BEST COPY
AVAILABLE

Chapter 645 1989

Bill (H) 626 S _____

Original bill & hist. ____C

H. Committee on Business & Economic Development S. Committee on Business & Industry

Hearing Date(s) Feb 15 ✓C

Hearing Date(s) Mar 16 ✓C

Feb 17 ✓C

Mar 17 ✓C

____C

____C

____C

____C

Date Out _____C

____C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

Note: A free conference committee was appointed to address HB 626, but its minutes were never printed.

STATUS SHEET

51st LEGISLATIVE SESSION

Business & Economic Development COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
577	2/6	2/10	2/13			2/13					
585	2/6 with down	2/10									
591	2/7	2/17	2/17			2/17					
565	2/7	2/14	2/21			2/21					
611	2/9	2/13	2/14			2/14					
613	↓	2/15	2/15		2/15						
617	↓	2/16	(2/17 TABLED)								
600	2/10	2/14	2/17	2/17							
624	↓	2/17	2/17		2/17						
626	↓	2/15	2/17			2/17					
627	↓	2/16	3/20 TABLED								
483	3/30 2/9	2/8	2/14			2/14					
635	2/11	(2/15	TABLED)								
651	2/13	2/14	2/14	2/14							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Proponent Testimony:
None

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Simon asked Rep. Addy to explain subsection 4 on page 2 of the bill, you have the interest charge and then this fee also. Rep. Addy said they tie this back to sub (a), we cannot restrict them to anything less than \$1 per transaction or \$15 per value of transaction.

Rep. Glaser asked Rep. Addy who was going to take care of the poor people? If the interest rate goes back up to 18 percent for the good guys, then who will take care of the poor people. Rep. Addy ask if he said 18 percent? Rep. Glaser said the rate was up to 21 percent for farmers who had good portfolios. Rep. Addy said if you prefer to state the bill in terms of a certain percentage over prime that would be fine with me. One and one-half percent per month over prime, for instance, would be about what the first figure is, the two and one-half percent per month. We can amend the bill. Rep. Glaser said the one and one-half percent above prime would probably be similar to what Rep. Smith would pay and me because I don't have very many resources I would be two percent. Rep. Addy said one and one-half percent above prime, that is exactly what is being charged here, is 18 percent per year above prime. That isn't a real fleece as far as I am concerned.

Closing by Sponsor: Rep. Addy said he closed.

HEARING ON HOUSE BILL 626

Presentation and Opening Statement by Sponsor:

Rep. Whalen stated that this bill is a housecleaning bill, simple bill, and third it is a very important housecleaning bill. This bill relates to the situation in regard to station agents on railroads in Montana. This bill will define public convenience and necessity with respect to the duty of a railroad to furnish shipping and passenger

facilities; and amends Section 69-14-202, MCA.

Testifying Proponents and Who They Represent:

James T. Mular, State Legislative Director, Transportation
Communications Union, Butte
Richard Van Aken, TCU, Missoula

Proponent Testimony:

See exhibit 1 for Mr. Mular's written testimony.

Mr. Van Aken stated that in the particular case Mr. Mular mentioned, the Superior hearing, I attended that hearing as well as all MRL hearings that went on from Darby to Thompson Falls and in the Superior hearing, in particular, I think it was the first place where it became very clear to me what we were dealing with was what I consider a misinterpretation of the intent of the law when it comes to public convenience. In Superior we had preponderance of testimony from community members, people who had to cross the tracks, and had common contact with the agent there. We thought we had a preponderance of testimony in favor of keeping that agency. Instead, the lack of shipper's testimony did us in. I would like to point out that what we are dealing with here in this stage of the game is that public convenience and necessity is really interpreted as a shipper's convenience and necessity and we believe that the public does have some right to input on these agency hearings. We recognize there will always be cases where there is just no particular reason for keeping the agency. When we run into a situation like Superior and we find the definition that we thought we were working under is totally different it takes it right out of our hands. We are asking you to put the public back into public convenience and necessity.

Testifying Opponents and Who They Represent:

Orson Murray, Operations Manager of Montana Rail Link
John Grawell, Superintendent, Montana Rail Link
C. E. Keeler, Train Master, Burlington Northern Railroad

Opponent Testimony:

Mr. Murray opposes this bill. There has been a move to eliminate these agents because of the cost concept. These costs are all borne by the shipping public in the final analysis. Yard clerks must be defined from online clerks. Online clerks did perform roll-by inspection of trains. Yard clerks never did. If there was a problem they tried to contact the train and stop them or alert them to the

problem. Online clerks usually work from 8-5 p.m. approximately 250 days a year, excluding Saturdays, Sundays, and holidays. As a safety factor these men play a very minimal role. Much of the safety area in the railroad industry has been preempted. The passage of this bill would put the PSC in direct conflict with others.

Mr. Grawell thinks this bill ties in with what happened in Helena on February 2nd. There has been a lot of speculation of what or may not have taken place in the incident in Helena on that date.

I would like to try to shed a little light and how that ties in with what an agent may or may not have done under those circumstances.

Basically, the cause of the accident primarily was that the air brakes were not properly applied at Austin. All the air braking pressure which is required by the rules we use was not applied. We do not require hand brakes to be applied unless the train is going to be left unattended. That was not the case at all. The crew was in the immediate area, within 200 feet of the train, but failed to observe the train constantly. Air brake pressure from the train line tends to leak out in sub-zero temperatures. The gaskets shrink, there is more leakage, and when you apply the air brakes, it has to be done as prescribed by the rules and the train is placed in emergency so that we get the maximum utilization of pressure.

There have been allegations from the press that a caboose, somehow, would have prevented this from occurring. I assume the people that make those allegations think that someone on the caboose could have set the emergency air brakes. It takes about 45 pounds of train line pressure to be able to initiate an emergency application of the train brakes. By the time the train started to move the brakes applied was below that pressure, matter of fact, it was down to 50 and leaking when the utility employee got the engines off. With that pressure, an emergency application of the brakes could not have been applied. This would leave anyone on the caboose little option other than to jump or ride the collision. Hand brakes would be out of the question, contrary to what you see in the movies. We no longer have running boards along the top of the cars. It would be impossible for anyone to go from car to car applying hand brakes on a train traveling, in our estimation, in excess of 60 miles per hour at times, at temperatures of 37 degrees below zero, the cold weather hampering their efforts. We very likely would have had fatalities if we had had an occupied caboose.

Let me deal a little bit more with how an agent would or would not have affected this incident. First of all the

agent would not have even been on duty at that time of morning. If there had been one, he would not have had any interaction from the event other than possibly being in the position to be injured at the station.

Agents work from 8 to 5 and in most cases from the safety aspect they are in position to observe trains a maximum of 23 percent of the time. During the same hours, section workers, welders, maintenance, track inspectors are on the track inspecting trains and in most cases on both sides. The agent can only see one side. In addition, inbound crews of trains and through transit points roll the train by for the outbound crew as they leave town to inspect the train. Typically on the MRL, they will meet from 4 to 12 trains on a run. In each case the trains being met inspect each other. The agents in the past could detect hot boxes when the old friction type bearings were used because they would catch on fire. Over 90 percent of the cars on the railroads today have roller bearings. You cannot detect problems with roller bearings down inside the track. I defy anybody to tell me that roller bearings are going out as it goes by. The only way we can detect those is with hot box detectors. This is a mechanical device which senses the heat of the axles as it goes over the device and by radio indicates to the crew that they have a hot box and where it is located on the train. We have these located at least every 40 miles over main lines and in some cases as close as 20 miles.

The Brotherhood of Locomotive Engineers who represent all the operating crafts on MRL property have given us unanimous support in our position that agents are merely an unnecessary duplication in anything that can contribute to the safety of the train. We have, in fact, the president of their local in Laurel, will testify on behalf of our position in the investigation before the Public Service Commission. We have, in fact, discussed the safety in the PSC hearings. We have not had one shipper protest in the time we have been involved. To the contrary, we have a lot of busy shippers who took time from their schedules to testify in our behalf here. We have one protest from the Public Service, volunteer fireman in Superior who was concerned about the issue of furnishing information on trains in the event there was a derailment, etc. I think once he understood that the engineer has all the information on what was on the train rather than the agent, his concerns were addressed.

Our crew has excellent communication with our dispatching system in Missoula who maintain at their fingertips, telephone numbers of emergency responders in every community along our line. When they reach them they give them the information they need. An agent would have to call in to get the information and then pass it back to the responder if the phone works. As it did not the other morning in Helena, the phones were out. This would cost

valuable time and detract rather than enhance safety. What was done with no agent present, was the crew and train involved when they arrived at the scene used the emergency responders at Benton Avenue, a road master was present who had communication on his portable telephone with the dispatching center in Missoula and who then was able to, with the fire chief standing right beside his vehicle, communicate with the fire chief, directly with our dispatching office even though telephone communications were impossible. We were able to get the information to him with our portable telephone system. If an agent had been involved in Helena, his radio was out, went as soon as the electricity went out, his company telephone system went out, it all operates through an electrical switchboard, all we had left was people out there taking care of the situation without communications. We met with fire departments all across our railroad, we have been partners in the formation of some of their emergency disaster plans including the one in Helena before the incident.

I certainly don't consider a train running away to be a success story, but a lot of people didn't have things right after the incident. An agent would have been of no value in that situation, in fact, if he were utilized, the passage of information would have an adverse affect on the safety of the general public in that situation by being one more step to slow the process. In conclusion, we would like to use our resources to improve branch lines and provide better rates for the shipping public. Many of these individuals are hard working motivated employees, technology has made their position unnecessary for the safety of the shipping public. We need to channel our efforts in something more productive so that we can better utilize our resources.

Mr. Wheeler opposes this bill. Rep. Whalen states that this is a simple and housecleaning bill. We have reservations about it being a housecleaning or simple bill. In response to Mr. Mular's testimony regarding the duties of an agent from the BN manual which was published upon the merger of the Northern Line Railroads in 1970. That manual has long since been updated and the statement read by him is several years obsolete.

Questions From Committee Members: Rep. Blotkamp asked Rep. Whalen what he meant when he said the PSC does not consider safety a factor for having agency facilities. Rep. Whalen said at the present time they do not, but if this bill is passed they will have to.

Rep. Wallin said he did not see any of the public as proponents of the bill, Rep. Whalen decided not to bring a line of people in because the bill is pretty clear as to what it does.

Rep. Blotkamp asked Mr. Murray if agencies would be required to operate where they do not currently operate? Mr. Murray said to a great extent, yes.

Rep. Bachini asked Mr. Mular if the stations that are closed now have to be reopened? Mr. Mular said they would not.

Closing by Sponsor: Rep. Whalen said when the hearing was held in Miles City, it is my understanding that quite a bit of testimony was attempted to be offered with regard to safety, you are talking about a community with 8-10,000 people, not having an agency any more. The PSC would not hear that testimony. They have these people, and they claim they are up there sitting the trains go by. I read in the Billings Gazette approximately 6 months ago when the Amtrac derailed between Wolf Point and Malta, the first man on the scene to help those people injured in that derailment was a station agent, from Malta. The Gazette had a full page story on the derailment and went on and on about not only what the people in the community did to help the injured in the derailment, but also the commendable job the station agent in that community did. Of course they are going to be sitting there watching the train go by.

DISPOSITION OF HOUSE BILL 645

Motion: Rep. Bachini moved DO PASS as amended.

Discussion: Rep. Glaser said if this bill passes the poor people are not going to be able to get any money. If the cost of money goes up, no one will loan poor people money. It deals strictly with prime rate. A good customer gets 2 percent above prime, I think prime right now is 9.6 percent, so that is 11.6 percent. On the 20th of the month somebody runs out of food to feed their family for some reason or other. They take the microwave down to the pawnshop and get money to feed their family for 8-10 days. The numbers in here are devastating to poor people. I represent more poor people than anybody else on this committee. Rep. Pavlovich asked Rep. Glaser if he had an amendment he would like to propose. Rep. Glaser said he would like to sit down with Rep. Addy and come up with something that is at least keyed to the prime rate that absolutely limits them from getting any money when times are tough and you have a heavy inflation going on. I think we need to do something with it.

Rep. Bachini asked Rep. Glaser if we could do whatever the committee wishes? Either pass or kill the bill and in the meantime if we pass the bill you go ahead and work with Rep. Addy and take care of your concerns. Time is of the essence now.

to the bill the maintenance electrician must have the same background and information as the engineer has. It doesn't state anything in the test items about maintenance. I think what they want to do is substitute that maintenance experience with education.

Rep. Thomas asked Rep. Glaser what stages of electrical licenses are there? Rep. Glaser said there are basically an apprenticeship, journeyman, and after so many years of experience, you can take a master test. To run a shop, you have to have or be a master, a journeyman runs the jobs, under you, you can have a combination of journeyman/apprentice or people that are called groundsmen.

Rep. DeMars moved a substitute motion to table the bill.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 635 was TABLED 9-7 vote.

DISPOSITION OF HOUSE BILL 626

Motion: Rep. Bachini moved DO PASS.

Discussion: Rep. Wallin said he had a question during the hearing and Rep. Bachini said he would answer it during executive action. Rep. Bachini said when there were hearings up on the high line and I took the time to talk to the elevator operators up along the high line as to their feeling whether that station should remain open or close. They had been instructed by their corporate company to not attend any of the hearings and to not even vote. One gentleman showed me the letter directing him not to attend and testify against the closing. If he did he would loose hi job. Even though that agent or clerk provided a service to their company. That is why you don't see people coming in here and testifying because they have been instructed not to.

The closer is based more on the shipper's testimony than John Q public.

Rep. Thomas asked Rep. Bachini about the term "comfort" on page 2, line 3, that seems to be too broad of a term? Rep. Bachini said it might be, I have no problem with it. Rep. Thomas moved to strike the word comfort on page 2, line 3. Rep. Hansen asked if they could now take out the rest rooms? Rep. McCormick asked if the streamliner would now take out the sleepers? I think that is comfort if you lie down.

Rep. Thomas said this is not a contract, it simply defines what public convenience and necessity is. Rep. McCormick said he thought that was public convenience to get a sleeper and lie down to sleep instead of having to sit up. The amendment to take out the word comfort failed.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 626 received a tie vote 8-8.

DISPOSITION OF HOUSE BILL 613

Motion: Rep. Hansen moved DO NOT PASS.

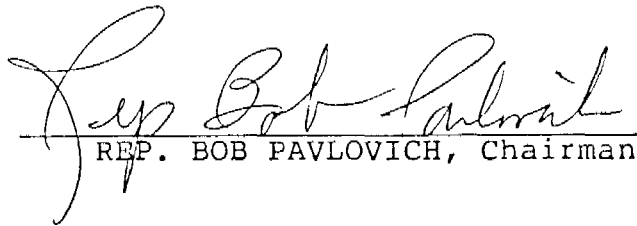
Discussion: Rep. Blotkamp said it's a good bill to help do just what Rep. Menahan wants, to promote the centennial celebration.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 613 DO NOT PASS 10-6 vote.

ADJOURNMENT

Adjournment At: 11:35 a.m.


REP. BOB PAVLOVICH, Chairman

BP/sp

3903.min

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on February 17, 1989, at
7:30 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 600

Motion: Rep. Bachini moved DO PASS.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 600 DO PASS.

DISPOSITION OF HOUSE BILL 626

Motion: Rep. Blotkamp moved DO PASS. Rep. Johnson moved an
amendment to the bill.

Discussion: Rep. Blotkamp stated that he would like to change
his vote to a DO PASS. Originally I did not want to send
out a message to MRL that we were antibusiness. Through
further testimony that I have heard and clarification, I
don't see any problem with the bill. If we can bring the
bill back so I can change my vote I would appreciate it.

Amendments, Discussion, and Votes: Rep. Johnson wants to make an
amendment to make the bill effective upon passage and
approval. The amendment DO PASS 10-5 vote.

Recommendation and Vote: HB 626 DO PASS as amended 9-7 vote.

DAILY ROLL CALL
BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 15 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		<i>exc</i>
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		<i>exc</i>
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
 DATE 2/15/89 BILL NO. 626 NUMBER 1

NAME	AYE	NAY
Bob Pavlovich	X	
Bob Bachini	X	
Rob Blotkamp		X
Gene DeMars	X	
Bill Glaser		X
Stella Hansen	X	
John Johnson	X	
Vernon Keller		X
Tom Kilpatrick	X	
Lloyd McCormick	X	
Thomas Nelson		X
Bruce Simon		X
Clyde Smith		X
Don Stepler	X	
Fred Thomas		X
Norm Wallin		X

TALLY

8 8

Sue Pennington
 Secretary

Bob Pavlovich
 Chairman

MOTION: Bachini moved to pass

HB 626

R.R.

61-302. Maintenance of adequate service. — Every ~~public utility~~ shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. [1913, ch. 61, § 12b, p. 247; reen. C.L. 106:45; C.S., § 2412; I.C.A., § 59-302.]

Cross ref. Equal transportation rights guaranteed, Const., Art. 11, § 6.

Cited in: Application of Pacific Tel. & Tel. Co. (1951), 71 Idaho 476, 233 P.2d 1024.

ANALYSIS

Abandonment of service.

Cost of service.

Discrimination.

Efficiency.

Equal facilities.

Negligence.

Rate making.

Right to require service.

Sufficiency of service.

Telephone service.

Warning of danger.

Water service.

Abandonment of Service.

On an application by a railroad to abandon a portion of its service and substitute service of another sort in lieu thereof, the burden of proof rests on the railroad to show that the proposed substitute service would be adequate, efficient, just and reasonable. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Where the total revenue from passenger trains over a certain branch line for eighteen months was \$11,473.80 as against an expense of \$23,063.46, the use of the passenger train service by the public being negligible, and there were adequate and efficient means of transportation over another railroad and by bus service, the public utilities commission erred in denying the railroad's application to discontinue passenger train service and to substitute, in lieu thereof, mixed trains consisting of a passenger car and a baggage car on existing freight trains. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

No fixed rule can be applied in determining whether or not a railroad is entitled to discontinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

The action of the public utilities commission in denying a railroad's right to discontinue passenger trains on a certain branch

line and to substitute in lieu thereof mixed trains consisting of a passenger car and a baggage car on existing freight trains was neither arbitrary nor capricious, although the service was operated at a loss, where a discontinuance would leave the public practically without railroad passenger service and with only a minimum of bus service at a time when the operation of motor vehicles was seriously restricted because of war, and the operation of the railroad's entire system showed a profit. In re Application of Union Pacific R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Cost of Service.

In determining whether patronage justifies expense of operation of passenger trains on a railroad's branch line, it is proper to take into consideration the expense of furnishing passenger service, but that is not the most important question, the controlling question being the necessity and reasonableness of the service to the public. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Discrimination.

Railroad company, engaged in the business of common carrier, is bound under the common law to receive and carry, within the class of goods it is engaged in carrying, such goods as are tendered for that purpose; and, in absence of a special contract, to carry them with the full common-law liability of a common carrier. McIntosh v. Oregon R. & Navigation Co. (1909), 17 Idaho 100, 105 P. 66.

Efficiency.

Electric utility was found by commission to be rendering reasonably good service, notwithstanding the unsatisfactory character of its heating service, on the ground that electricity from an economic standpoint is too expensive to be used for heating purposes. (On rehearing) In re Idaho Light & C. Co., 2 P.U.C.I. 53, P.U.R. 1915A, 2; In re Idaho Light & C. Co., 2 P.U.C.I. 38.

Equal Facilities.

Contract entered into by railroad company granting to steamboat company the exclusive right to receive and discharge freight and passengers at dock or wharf which was a part of and connected with its depot and station grounds, and which afforded the only means

IDAHO CODE

and facility for approaching the station grounds by means of the water highway, and excluding all competitors of such steamboat company from like or similar privileges at any time or at all, was undue and unreasonable discrimination in favor of one company and against its competitors, which was in violation of Const., Art. 11, § 6. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell* (1912), 22 Idaho 752, 128 P. 565, 43 L.R.A. (n.s.) 965.

Negligence.

Where the conclusion to be drawn from defendant water company's evidence was that the cause of rupture in its water mains could have been a defect in manufacture of the main or damage to the main in installation which reasonable inspection at that time would have revealed and that such condition permitted corrosion to weaken the main permitting the rupture to give rise to a reasonable inference of negligence under the doctrine of *res ipsa loquitur*, the conclusion was in harmony with the duty imposed by statute upon a public utility. *C. C. Anderson Stores Co. v. Boise Water Corp.* (1962), 84 Idaho 355, 372 P.2d 752.

Rate Making.

The public utilities commission has authority to fix rates which are just and equitable, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist* (1914), 26 Idaho 222, 141 P. 1083.

Right to Receive Service.

A new district or community may be entitled to receive service from a public utility without guaranteeing an amount of revenue at the usual rates to satisfy the utility. *Walters v. Utah Power & Co.*, P.U.C.I. Case F194, Order 601, P.U.R. 1920C, 212.

Public utility will not be required to render service unless such rendering will afford a revenue which will pay the operating expenses and taxes, provide proper depreciation reserve, and afford a fair return on the investment judiciously made in property used, useful, necessary and required in the service of the public under efficient and economical management. In *re Idaho Power Co.*, P.U.C.I. Case F449, Order 838, P.U.R. 1922C, 705.

It is a common carrier's duty to furnish such service as will produce the greatest comfort and convenience to the greatest number of the traveling public. In *re Oregon-Washington R. & Co.*, P.U.C.I. Case F462, Order 841, P.U.R. 1922D, 155.

A public utility may be required to continue service only so long as the public support warrants such continuance. In *re Colonial Trust Co.*, P.U.C.I. Case F660, Order 1124, P.U.R. 1928D, 628.

The refusal of a public utility company to furnish service in any part of a territory in

which an independent company, not a public utility, has entered, cannot be justified, provided public convenience and necessity requires service therein. In *re Darnielle*, P.U.C.I. Case F663, Order 1138, P.U.R. 1928E, 211.

A railroad was entitled to permission to substitute a caretaker for agency service for community on a branch line having 800 voters, where such substitution would not be a material detriment to the community and would lessen the expense and release a telegraph operator for more necessary service. In *re Application of Union Pac. R. Co. for Leave to Discontinue Agency at Montour* (1943), 64 Idaho 529, 134 P.2d 599.

If the service rendered by a railroad is adequate, efficient, just and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and indirectly, on the public by requiring unnecessary and useless expenditures. In *re Application of Union Pac. R. Co. to Abandon Certain Train Service* (1943), 64 Idaho 597, 134 P.2d 1073.

Sufficiency of Service.

Service offered by public utility must be reasonably adequate and efficient and must be furnished at rates which the consumers can reasonably afford to pay. *Council v. Adams County Light & Co.*, P.U.C.I. Case F323, Order 661, P.U.R. 1920E, 381.

Adequacy of service was not shown by showing that under unusually advantageous conditions a sufficient supply of water could be had. *Eddy v. Lewiston Valley Water Co.*, P.U.C.I. Case F409, Order 777, P.U.R. 1921D, 479.

This section does not require maintenance of plainly excessive or obsolete equipment. In *re Boise Artesian Water Co.*, P.U.C.I. Case F504, Order 909, P.U.R. 1931A, 566.

X Extent of demand for service and use thereof by the public is to be considered in determining the reasonableness of and necessity for such service. In *re Oregon Short Line R. Co.*, P.U.C.I. Case F603, Order 1029, P.U.R. 1926E, 364.

Conditions may be such as not to require the keeping of an agency at a railroad station, and at the same time require a caretaker. In *re Northern Pac. R. Co.*, P.U.C.I. Case F643, Order 1085, P.U.R. 1927E, 653.

X It is the duty of the public utilities commission, when an application to discontinue an agency and substitute a caretaker to furnish all substantial service previously furnished, to consider whether the substituted service would be "adequate, efficient, just and reasonable service," in the light of the facts. In *re Application of Union Pac. R. Co. for Leave to*

VISITORS' REGISTER

Business

COMMITTEE

613 626

BILL NO.

635

645

DATE

2/15/89

SPONSOR

~~Minuteman~~ ~~Whitman~~~~Hoffman~~ AddyPlease put
bill number. 7

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JIM LEWIS SB635	HELENA		X
Charles Rossiter	Sheridan	X	
Shelly Lane	City of Helena		613
Terry Murphy	Farmers Union - Gt. Falls	X(HB626)	
Mignon Waterman	MT Assoc. of Churches		613 X
Tim Baker	PSC (HB646)		
Wm Egan	Mont Elect. Conf.		635 ^x
Judy Reger	GIA	613	
James T. Mular	TCU Butte MT	626	
Richard VanAken	TCU Missoula MT #43	626	
(Red) Menahan	AFT ANACONDA	626	
C.E. KEELER	GREAT FALLS		626
Wayne Budd	Mont PSC		
Raymond West	Helena UTH. St. Din.	✓	
Lee Haseaw	MLCT	626	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 17 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/17/89

BILL NO. 626

NUMBER

NAME	AYE	NAY
Bob Pavlovich	X	
Bob Bachini	X	
Rob Blotkamp	X	
Gene DeMars	X	
Bill Glaser		X
Stella Hansen	X	
John Johnson	X	
Vernon Keller		X
Tom Kilpatrick	X	
Lloyd McCormick	X	
Thomas Nelson		X
Bruce Simon		X
Clyde Smith		X
Don Stepler	X	
Fred Thomas		X
Norm Wallin		X

TALLY

9

7

Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION:

~~Bob~~ Blotkamp moved do pass
do pass as amended

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE _____ BILL NO. 626 NUMBER _____

NAME	AYE	NAY
Bob Pavlovich	X	
Bob Bachini	X	
Rob Blotkamp	X	
Gene DeMars	X	
Bill Glaser	X	
Stella Hansen	X	
John Johnson	X	
Vernon Keller		X
Tom Kilpatrick	X	
Lloyd McCormick	X	
Thomas Nelson	X	
Bruce Simon		X
Clyde Smith		X
Don Steppler	X	
Fred Thomas		X
Norm Wallin		X

Amendments

TALLY

10

5

Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION: _____

House Bills

STATUS SHEET

51st LEGISLATIVE SESSION

Business & Industry COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 577		3/14	3/14					3/14			
HB 571	2/28	3/14	3/14					3/14			
HB 600	3/28	4/7	4/12								
HB 611	2/28	3/8						3/8			
HB 626	2/28	3/16	3/17 3/27						3/20	minority Rpt.	
HB 645	2/28	3/15	3/16							3/16	
HB 652	2/28	3/15	3/16 3/27							3/27	
HB 662	2/28	3/14	3/15							3/20	
HB 669	2/28	3/12	3/21							3/15	
HB 683	3/1	3/10	3/10					3/10			
HB 705	2/28	3/9	3/9						3/9		
HB 706	2/28	3/7	3/8					3/8			

a separate sheet for Senate Bills, House Bills, and Resolutions.

Senator Boylan asked if state liquor sales, and sale of the state worker's compensation were examples of what they were looking at? Mr. Phillips said yes, transfer of the liquor sales was requested by the Governor, and those were areas they wanted to look at seriously.

Senator Meyer asked for an explanation of section 3, as it appeared to him that the requirements would virtually eliminate privatization? Representative Menahan said section 3 set forth a criteria which must be followed. He said the section required savings, publicized bids, and proof of economic advantages.

Senator Meyer said section 3, line 19, subsection (a), called for clearly demonstrated over-all cost savings to the state. He said that type of language continued on page 3, line 1, and said all of that criteria would prevent any contracting out to the private sector. Representative Menahan said it did tie it down, but he wasn't trying to completely stop turning anything over to the private sector. He said he was basically talking about things where the state was in the business, and had the employees. He said he was upset about situations where the state was still in the business, such as institutions, and the services had been privatized at a greater cost.

Closing by Sponsor: Representative Menahan said he closed, and his main concern was with economy, and supporting services the state had to offer. He said he thought HB 719 was a probusiness bill.

DISPOSITION OF HOUSE BILL 719

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 626

Presentation and Opening Statement by Sponsor:

Representative Whalen, House District 93, said HB 626 inserted a definition of section 69-14-202 MCA, which was the statute governing hearings and closures on railroad stations. He said that in previous

legislation, language had been introduced for the purpose of determining whether or not railroad stations were needed at particular locations in Montana. He said the past legislature had heard legislation to remove the artificial language, which left the statute with the simple wording which read "public convenience and necessity". He said the resulting history had been that the Public Service Commission had listened to testimony offered by shippers, and since that time there had been approximately thirty-two stations closed. He said the purpose of HB 626 was to insert a definition of public convenience and necessity, which appeared on page 2, line 13 of the bill. He read the definition, and submitted to the committee that he thought that was probably what legislature had thought public convenience and necessity had meant. He stated that the definition was taken from Idaho statute, and it had proven successful there.

List of Testifying Proponents and What Group They Represent:

Representative Stang - House District 52
Alec Hansen - Montana League of Cities and Towns
James T. Mular - Chairman, Montana Joint Rail Labor
Legislative Board
Kay Norenberg - Women Involved in Farm Economics
Senator Tveit - Senate District 11

List of Testifying Opponents and What Group They Represent:

Pat Keim - Superintendent of Operations, Burlington
Northern Railroad
Orson Murray - Montana Rail Link
Randy Johnson - Executive Vice President, Montana Grain
Growers Association
Leo Barry - Helena Attorney, representing Burlington
Northern Railroad

Testimony: Representative Stang said he stood in favor of HB 626, mainly from the point of public safety. He said he had testified at one of the station closing hearings, and the testimony had revealed that there were radio dead spots on the railroad tracks, where the trains could not communicate with the base station. He said their station agent had testified that these dead spots made it unsafe for workers, and if there was a train accident in one of those dead spots, it would be hard to communicate the occurrence of that accident. He said that as a volunteer fireman in that area, he was concerned that a train accident or accident related fire would not have a reporting facility available. He said that right now, there were instructions that fires

were not to be fought until they spread outside of the railroad right-of-way, because they had never been provided with a contact number for the railroad. He said they felt it was important to consider the safety factor when stations were closed.

Alec Hansen said they were in support of HB 626, in behalf of the small cities and towns that believed the railroad depots were an important part of their community. He said they felt the railroad depots were a public convenience, and an economic asset to those cities and towns, and they urged the committee to favor the bill.

James Mular said they represented approximately 3500 active and retired railroad employees in Montana, and they rose in support of this legislation, from a public standpoint. He said it was interesting to note that HB 626 referred to passenger accommodation, as well as freight. He called the committee's attention to Exhibit #6, and spoke of the flagstops listed. He said that meant there was a toll free number listed for potential passengers to call for a boarding number, then the passenger had to reach the designated boarding point. He said the information pertaining to arrival and departure variations was not always up-to-date, and he said they did not feel a flagstop was really an accommodation to a passenger. He presented his testimony from the information in Exhibits #7, #10, and #11. He said he personally felt this was not a labor issue, and they were merely present to present a resume of what had happened in the area of this bill. He said he hoped the committee would pass HB 626.

Kay Norenberg read her testimony from Exhibit #8, and presented it for the record. She urged passage of HB 626.

Senator Larry Tveit said he rose in support of HB 626. He said there was an area of convenience to consider for his district's patrons and shippers, and he felt the railroad could justify their actions. He said he was also concerned about the flagstops for the passengers, and he stated a concern that service was deteriorating along that line. He said the flagstops presented an inconvenience for people in those communities.

Pat Keim said he was speaking in opposition to HB 626, because it was their feeling that the present statute was totally adequate to meet the situation. He said the revision being proposed was unnecessary and brought in an irrelevant factor, which was public service and

need. He said that what was being proposed, was to introduce a safety requirement into the present statute, as a consideration of part of the PSC proceedings. He said that in reality the function of the station agents, had not really been train safety, and the agents were not trained in train safety, freight car or locomotive inspection, or anything along the line of safety. He said qualified inspections were made by qualified personnel, as to the trains safety, and wayside detectors watched the trains along the main lines. He said station agents were only present in the stations, twenty percent of the time, and their limited presence would not cover that situation anyway.

He said that the Amtrak flagstops, in reality had a provision for someone to come open the depots at train time. He said that whenever there wasn't an agent on duty, Amtrak had a caretaker to come open the waiting room facility, for train passengers.

He said it was proper to consider the need for the agency, in terms of the lite of public need. He said they really did not perform a function, as far as safety to the train.

Orson Murray said his entire career had entailed many jobs with the railroad, and he had been responsible for the operation of agents on the line. He said agents primarily had taken care of the carload, sold tickets, handled milk shipments, took care of baggage, Western Union, and the Railway Express. He said that slowly the duties had been removed, until the railroad was left with carload business only. He said that technology had changed, and there presently was very little for an agent or clerk to do. He said he would like to note, that OSHA and SRA had preempted much of the safety area. He said passage of HB 626 would put the PSC in opposition to the existing safety bodies.

He said they hadn't had any protests from shippers, regarding public convenience and necessity. He said the term of public convenience and necessity came from the Interstate Commerce Act, and there were many rules and regulations governing this interpretation. He said they felt the PSC was adequate and capable, and had proven itself efficient, and they stood in opposition to HB 626.

Randy Johnson said their group represented Montana wheat and barley growers, who were heavy users of the rail transportation system in Montana. He said they rose in opposition, because transportation costs in their

commodities represented a large percentage of their cost of production. He said they felt HB 626 would place unreasonable restrictions and regulations on transportation companies, and would raise their cost of transportation. He said they didn't believe HB 626 had anything to do with safety, and would do nothing to further the cause of rail safety in Montana. He asked the committee to oppose HB 626.

Leo Barry said that under current law there had been numerous petitions submitted by Burlington Northern Railroad, to close agencies. He said there were a number of considerations used, to select which agencies were to be closed first. He stated the two primary ones were Burlington Northern's effort to accommodate the PSC's travel budget, and they had taken the easier closures first. He said the choice of the easy closures, had rendered ten of the eleven closures granted, because there had been no opposition other than Mr. Mular. He said he could not recall any shipper ever appearing in opposition to a closure, and the PSC allowing that closure. He said there were situations where shippers had opposed, and the PSC had denied the closure.

He said he had researched HB 626, and while it was true that the language was taken from Idaho statute, it was not particular to agencies. He said the language was a general, broad definition that was included in the Idaho statute, and applied to all utilities which the PSC regulated in Idaho. He stated that the broad definition was now being proposed to apply to a specific provision of Montana statute, and did not make sense, in the manner it would read. He said that was because of the law presently on the books. He said page 2 of the bill, in subsection 2 showed that a railroad could petition the PSC, and if it demonstrated a burden to the railroad, and demonstrated that an agency was not needed for public convenience and necessity, then the PSC must grant the closure. He said this bill defined public convenience and necessity, and that definition read, "public convenience and necessity means the maintenance and staffing of facilities". He said that became a circular argument, which was an impossible standard to meet. He said he thought the bill was fraught with legal problems, both federally and administratively. He offered an editorial from the Livingston Enterprise, for the committee's review. (See Exhibit #9) He urged a do not pass for the bill.

Questions From Committee Members: Senator Lynch said the major concern seemed to be from rural Montana, and apparently they did not feel the current law was sufficient. He asked Mr. Barry if they felt the present law was adequate, even though a large number of Senators and Representatives who signed the bill, did not? Leo Barry said he had not spoken to those legislators, but what he was saying was that the PSC had a lot of pending decisions to make, and he wasn't sure there should be any change in the law. He said he thought they should let the PSC finish its job, then see if there was dissatisfaction. He stated that there were present statutes on the books, to adequately grant the PSC authority, on safety matters concerning the railroad.

Senator Lynch asked if we had the language, being presented from the Idaho statutes, in any of our Montana laws? Mr. Barry said that had been his reference, we did have language, but the laws were structured differently. He cited different sections of the Montana statutes, which covered the safety factor, and stated that Idaho did not have an agency law like the one Montana presently had.

Senator Lynch said that Mr. Keim had stated that Mr. Mular's example of flagstop situations was incorrect. He stated that there never was a situation where a passenger would have to wait in our weather conditions for a flagstop. Mr. Mular said he had been a victim of that particular circumstance. He said the caretaker Mr. Keim had spoken of, had not shown up, and he had been forced to sit in his car and wait.

Senator Williams asked if they were contemplating twenty-four hour service at all of the stations, or what did they have in mind from a safety standpoint? Mr. Mular said safety was a factor, but was a separate factor. He said that once the station was closed which had provided safety, you had to submit another petition, and there was no way to get that particular party back. He said the question that should be submitted, was how many people were available, per track mile, for safety standards?

Senator Noble asked what Amtrak had to do with this? Mr. Mular said what happened was that when Amtrak was created, Burlington Northern made application to close the agencies, and those agencies had become flagstops. He said this statute was applicable to accommodations of passengers, as well as freight shippers.

Senator Noble stated that the grain shippers had just testified that their main interest was to the cheapest method of shipping. He asked what other products were in contention for shipping convenience in the bill? Mr. Mular said grain was an outgoing commodity, but there were incoming commodities, such as anhydrous ammonia, fertilizers, farm implements, vehicles and other needed items. He said it was a fallacy to assume there would be a cost savings by closing the stations, because the employees had lifetime guarantees which would far exceed the money saved by closing a few agencies.

Senator Noble asked about the testimony regarding trains traveling one hundred or one hundred and fifty miles, without communications? He asked what forms of communication were used? Pat Keim said trains themselves were equipped with two-way radios, and the radio system was operated off of a land-based backbone system. He said the land system had transmitter sites strategically located throughout the property. He said the land-based stations geographically covered a radius, which sometimes had some terrain limitations. He said the blind spots were generally a distance of less than one mile, and the longest he remembered was about two miles. He said there were very few of those spots, and they had nothing to do with the agency.

Closing by Sponsor: Representative Whalen said he thought there had been a very good hearing. He said it was too bad the committee wasn't the PSC talking about a specific station, because this was precisely the type of testimony they would like to have at the station agency closure hearings, and they weren't getting that testimony. He said the testimony of Mr. Keim, and Mr. Murray would have been appropriate testimony at a station closure hearing, but it had been presented here instead. He stated, in regard to Mr. Barry's testimony, that if the public wasn't allowed to present testimony at the hearings, there wasn't any sense in attending the hearings.

He stated, with regard to language contained in the bill, they had two representations made to them. He said the first was that safety was already provided for in other provisions within the statutes, and therefore it was not needed in HB 626. He said Representative Stang had also testified to the fact that safety was not included as a consideration at the closure hearing in St. Regis. He said he would suggest that the PSC was not considering safety, and they were not listening to testimony from anyone other than

shippers.

He said there had been testimony that the Idaho statutory language in HB 626 applied to utilities, but he reminded them that in Idaho a railroad was a utility. He said there were a number of case histories where this language had been applied to railroads in Idaho. He said he would submit to the committee, that there were all kinds of examples of how the language would apply, and what affect it would have. He said that case history was the reason this particular language was adopted, so there could be some certainty in the law, if HB 626 was passed. He said HB 626 did nothing more, or nothing less than expand the kind of testimony which would be allowed before the PSC's deliberation of a station closure. He said he thought it only fair to have a greater scope of testimony at the hearings, so that a good decision could be made on how to serve Montana with railroad service.

DISPOSITION OF HOUSE BILL 626

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 652

Presentation and Opening Statement by Sponsor:

Representative Brooke, House District 56, said HB 652 required a lender to pay the interest on a mortgage reserve account, and it was a simple procedure. She said that if you had a mortgage, it was usually accompanied by an escrow account which the bank or lending agency maintained. She said that while the money was in escrow for the payments, it was also earning interest. She said the proponents of HB 652 contended that the interest was entitled to the mortgage owner, and the bill proposed this idea be put in statute. She said the mortgagor would be responsible for paying the interest to the owner of the mortgage. She urged their concurrence, and told them the bill had passed the House with a sixty-four to thirty-four vote, and had a good hearing on the House floor.

BEFORE THE
MONTANA SENATE
BUSINESS AND INDUSTRY COMMITTEE

STATEMENT OF JAMES T. MULAR,
STATE LEGISLATIVE DIRECTOR,
TRANSPORTATION COMMUNICATIONS UNION
(Formerly the Brotherhood of Railway &
Airline Clerks)
440 Roosevelt Drive R-1, Butte, MT. 59701

Chairman Thayer, members of the Committee, TCU supports the amendment to Section 69-14-202MCA which defines the Common Law Doctrine of Public Convenience and Necessity (PCN). The 1987 Legislature amended this section relating to maintenance and staffing of railroad facilities. Formerly Montana required RR's doing business in Montana to maintain and staff station facilities in communities of 1,000 inhabitants and at least one in each county. Representative Bradely (Dem. Bozeman) amended this law by striking the population criterion defining public convenience and necessity, and merely inserted the present PCN without definition

If you will look at HB 626 bottom page one and extending to page two - Public convenience and necessity means:

"the maintenance and staffing of facilities with equipment and instrumentalities necessary to promote the safety, health, comfort, and convenience of the railroads patrons, its employees, and the public, which must in all respects be adequate, efficient, just, and reasonable".....

This amendment is the same as Section 61-302 of the Idaho Code. I am attaching a copy of that section to this statement, with legal citations pertaining to Idaho station closures.

It is interesting to note that HB 626 applies to both types of rail patrons. Shippers of Freight and Passenger users. As you know AMTRAK (National Rail Passenger Service) traverses Montana

across the highline. As a former Amtrak Ticket Agent there were 12 passenger train stops. That has been reduced 5 since 1970. Presently Amtrak makes regular stops at Wolf Point, Malta, Havre, Shelby and Whitefish. There are 7 flag stops. This means that a passenger must flag the train and board, or make reservations and the passenger train crew stops to pick them up. This is not a comfortable or convenient method. During winter or night time boardings- flag stop stations of Glasgow, Cut Bank, Browning, East Glacier, Essex, Belton (or West Glacier) and Libby could be hazardous to the health and safety of passenger boarders. East Glacier, Essex, West Glacier (Belton) were closed by B.N. Cut Bank Service was reduced to flag stop platform boardings. Browning the same. Imagine flagging a passenger train at 40 below. Or waiting for a passenger train that is running late.

HB 626 addresses these problems. It will not require BN to reopen its Glacier Park Stations. But - it will assure that the Montana PSC take into consideration the closure of passenger like Wolf Point, Malta, Havre, Shelby, Whitefish. Note that the bill gives substance to the meaning of public convenience and necessity. It applies to both freight and passenger customers.

I am attaching a copy of AMGTRAKS current time table that reflects regular stops and flag stops at Montana stations. These are:

Regular Stops

Wolf Point
Malta
Havre
Shelby
Whitefish

Flag Stops

Glasgow
Cut Bank
Browning
East Glacier
Essex
Belton (E.Glacier)
Libby

26-7
3/16/89

HB 626 reflects that a railroad must provide equipment and instrumentalities, and I would like to read into the record what a railroad agency is required to perform. This statement appears in Burlington Northern's PREFACE to their Agents:

" The agency is a VITAL part of Burlington Northern. In a sense, the Agency IS Burlington Northern to many of our customers who may have LIMITED contact with any other company representatives. The Agency role then is DOUBLY important. Not only must it protect the revenues and other vital business interests of Burlington Northern, it must also provide the customer with access to ALL THE SERVICE that the Company offers. The agency must be ready and able to establish contact with all departments and divisions of the various departments, including Transportation, Marketing, Engineering, Industrial Development and Property Management, the various Accounting divisions and sections, and others who may have information or services that a customer requires. Operating an agency in the manner necessary to protect company revenues and other vital business interests is a complex and exacting task requiring familiarity with the functions, instructions and responsible officers of all other departments of the company....

This preface reflects the vital need for agency services in remote areas of Montana. It also complies with the intent of HB 626 which alludes to EQUIPMENT and INSTRUMENTALITIES. A Staffed railroad station has the following equipment to transact business:

1. Radio/Train Crew and Dispatcher Communications, also Track Crew Communications.
2. Local Telephone Service, FAX copiers, limited computer hardware.
3. Safety devices, such as warning flares, dangerous commodity placards, car seals, track warning torpedoes, flagging devices
4. Typewriters, and telemetric devices necessary in executing company reports.

The following Paper Instrumentalities are available to Railroad Customers:

Bills of Lading, Over Short & Damaged Freight Reports, OSD Car Yard Check Reports, Customer Car Order Forms, Demurrage, Records such as average agreements and straight plan demurrage forms, FRA Hazardous Commodity Tariffs explains what to do in a local crisis with hazardous commodities. Seal Record Book, Record Book of animals killed along rail right of way.

HB 626 assures that this EQUIPMENT and INSTRUMENTALITIES remain with the station until the Montana Public Service Commission find otherwise through the Public Hearing Process. It does not require that Station already closed by the Commission will be required to reopen. The amenddment merely defines PCN.

Montana railroads have been gradually removing the above equipment and instrumentalities, reducing local contact, and then asking the PSC to close the agency for lack of work disregarding public safety.

For example, my office has attended every public hearing conducted by the PSC. Whenever we introduced testimony or documents relating to public safety, very little evidentiary weight was given to safety. The Commission merely applied the common law PCN standard which requires that shippers only have standing to oppose station closures. Many local governments opposed station closures since 1987 premised on Local Safety Concerns etc.

For example Montana Rail Link closed its dualized agency of St. Regis and Superior. Testimony reflected that the agent based in Superior had High Frequency Radio capabilities to communicate

Ex. #7
3/16/89

with train crews. The Superior St. Regis Line has radio blackouts with Locomotive based radios impairing communications with the train dispatcher. Often times the Superior agent would contact train crews giving them dispatch instructions. Emergency fact situations were entered in the hearing record without any weight to the retention of agency service.

The same scenario appeared in the BN Miles City Closing.

We would like to report to this committee that since the passage of the 1987 legislation eliminating PCN population criterion the following stations have been closed:

MONTANA RAIL LINK was given authority to close:

Darby, Hamilton, Stevensville, Superior, St. Regis, Thompson Falls, Plains, Paradise, Ronan, Polson, Drummond, Phillipsburg, Toston, Townsend, Big Timber, Columbus, Alder, Whitehall, Sheridan, Twin Bridges.

MONTANA RAIL LINK Stations that are still open:

Missoula, Helena, East Helena, Toston, Three Forks, Harrison, Belgrade, Bozeman, Billings, Laurel.

Total Open MRL Montana Stations ten (10)

BN STATIONS CLOSED BETWEEN APRIL 1987 thru November 1988

Brady, Dutton, Conrad, Valies, Choteau, Power, Big Sandy, Rudyard, Hingham, Wibaux, Circle, Farivdiew, Miles City.

At total of 13.

BN CLOSURE APPLICATIONS HEARD and awaiting PSC decision:

Chester, Harlem, Chinook, Hysham, Terry, Ophiem, Glentanna, Richland, Peerless, Scobey, Four Buttes, Plentywood,

Medicine Lake, Reserve, Antelope, Froid, Homestead, Culbertson. Total of 17 Fort Benton was denied.

BN STATIONS THAT ARE STILL OPEN:

Garrison, Huntley, Hardin, Forsyth, Glendive, Sidney, Wolf Point, Glasgow, Malta, Ft. Benton, Havre, Sweet Grass, Cut Bank, Shelby, Browning, Columbia Falls, Eureka, Whitefish, Kalispell, Libby, Great Falls, Stanford, Lewistown. Total Twenty Three (23).

UNION PACIFIC STATIONS 125 Mile operation

Dillon, Silver Bow, Montana

MONTANA WESTERN, 55 mile operation

Butte, and Silver Bow, Montana...

CONCLUSIONS

Montana railroads have closed 32 stations from April 1987 To August 1988 for an average of two stations per month. There are 17 stations awaiting FSC orders, and only one station closing was denied - Ft. Benton..... This is an alarming withdrawl which ignores the public and denies remote areas of Montana to rail agency services.

HB 626 addresses the concerns of Montana Communities relating to Rail Safety and public need.

Thank you for allowing me to appear before this committee..


JAMES T. NULAR, SLD TCU BUTTE MT

Ex. #7

3-16-89

61-302. Maintenance of adequate service. — Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. [1913, ch. 61, § 12b, p. 247; reen. C.L. 106:45; C.S., § 2412; I.C.A., § 59-302.]

Cross ref. Equal transportation rights guaranteed, Const., Art. 11, § 6.

Cited in: Application of Pacific Tel. & Tel. Co. (1951), 71 Idaho 476, 233 P.2d 1024.

ANALYSIS

Abandonment of service.

Cost of service.

Discrimination.

Efficiency.

Equal facilities.

Negligence.

Rate making.

Right to require service.

Sufficiency of service.

Telephone service.

Warning of danger.

Water service.

Abandonment of Service.

On an application by a railroad to abandon a portion of its service and substitute service of another sort in lieu thereof, the burden of proof rests on the railroad to show that the proposed substitute service would be adequate, efficient, just and reasonable. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Where the total revenue from passenger trains over a certain branch line for eighteen months was \$11,473.80 as against an expense of \$23,063.46, the use of the passenger train service by the public being negligible, and there were adequate and efficient means of transportation over another railroad and by bus service, the public utilities commission erred in denying the railroad's application to discontinue passenger train service and to substitute, in lieu thereof, mixed trains consisting of a passenger car and a baggage car on existing freight trains. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

No fixed rule can be applied in determining whether or not a railroad is entitled to discontinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

The action of the public utilities commission in denying a railroad's right to discontinue passenger trains on a certain branch

line and to substitute in lieu thereof mixed trains consisting of a passenger car and a baggage car on existing freight trains was neither arbitrary nor capricious, although the service was operated at a loss, where a discontinuance would leave the public practically without railroad passenger service and with only a minimum of bus service at a time when the operation of motor vehicles was seriously restricted because of war, and the operation of the railroad's entire system showed a profit. In re Application of Union Pacific R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Cost of Service.

In determining whether patronage justifies expense of operation of passenger trains on a railroad's branch line, it is proper to take into consideration the expense of furnishing passenger service, but that is not the most important question, the controlling question being the necessity and reasonableness of the service to the public. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Discrimination.

Railroad company, engaged in the business of common carrier, is bound under the common law to receive and carry, within the class of goods it is engaged in carrying, such goods as are tendered for that purpose; and, in absence of a special contract, to carry them with the full common-law liability of a common carrier. McIntosh v. Oregon R. & Navigation Co. (1909), 17 Idaho 100, 105 P. 66.

Efficiency.

Electric utility was found by commission to be rendering reasonably good service, notwithstanding the unsatisfactory character of its heating service, on the ground that electricity from an economic standpoint is too expensive to be used for heating purposes. (On rehearing) In re Idaho Light & Co., 2 P.U.C.I. 53, P.U.R. 1915A, 2; In re Idaho Light & Co., 2 P.U.C.I. 38.

Equal Facilities.

Contract entered into by railroad company granting to steamboat company the exclusive right to receive and discharge freight and passengers at dock or wharf which was a part of and connected with its depot and station grounds, and which afforded the only means

and facility for approaching the station grounds by means of the water highway, and excluding all competitors of such steamboat company from like or similar privileges at any time or at all, was undue and unreasonable discrimination in favor of one company and against its competitors, which was in violation of Const., Art. 11, § 6. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell* (1912), 22 Idaho 752, 128 P. 565, 43 L.R.A. (n.s.) 965.

Negligence.

Where the conclusion to be drawn from defendant water company's evidence was that the cause of rupture in its water mains could have been a defect in manufacture of the main or damage to the main in installation which reasonable inspection at that time would have revealed and that such condition permitted corrosion to weaken the main permitting the rupture to give rise to a reasonable inference of negligence under the doctrine of *res ipsa loquitur*, the conclusion was in harmony with the duty imposed by statute upon a public utility. *C. C. Anderson Stores Co. v. Boise Water Corp.* (1962), 84 Idaho 355, 372 P.2d 752.

Rate Making.

The public utilities commission has authority to fix rates which are just and equitable, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist* (1914), 26 Idaho 222, 141 P. 1083.

Right to Require Service.

A new district or community may be entitled to receive service from a public utility without guaranteeing an amount of revenue at the usual rates to satisfy the utility. *Walters v. Utah Power & Co.*, P.U.C.I. Case F194, Order 601, P.U.R. 1920C, 212.

Public utility will not be required to render service unless such rendering will afford a revenue which will pay the operating expenses and taxes, provide proper depreciation reserve, and afford a fair return on the investment judiciously made in property used, useful, necessary and required in the service of the public under efficient and economical management. *In re Idaho Power Co.*, P.U.C.I. Case F449, Order 838, P.U.R. 1922C, 705.

It is a common carrier's duty to furnish such service as will produce the greatest comfort and convenience to the greatest number of the traveling public. *In re Oregon-Washington R. & Co.*, P.U.C.I. Case F462, Order 841, P.U.R. 1922D, 155.

A public utility may be required to continue service only so long as the public support warrants such continuance. *In re Colonial Trust Co.*, P.U.C.I. Case F660, Order 1124, P.U.R. 1928D, 628.

The refusal of a public utility company to furnish service in any part of a territory in

which an independent company, not a public utility, has entered, cannot be justified, provided public convenience and necessity requires service therein. *In re Darnielle*, P.U.C.I. Case F663, Order 1138, P.U.R. 1928E, 211.

A railroad was entitled to permission to substitute a caretaker for agency service for community on a branch line having 800 voters, where such substitution would not be a material detriment to the community and would lessen the expense and release a telegraph operator for more necessary service. *In re Application of Union Pac. R. Co. for Leave to Discontinue Agency at Montour* (1943), 64 Idaho 529, 134 P.2d 599.

If the service rendered by a railroad is adequate, efficient, just and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and indirectly, on the public by requiring unnecessary and useless expenditures. *In re Application of Union Pac. R. Co. to Abandon Certain Train Service* (1943), 64 Idaho 597, 134 P.2d 1073.

Sufficiency of Service.

Service offered by public utility must be reasonably adequate and efficient and must be furnished at rates which the consumers can reasonably afford to pay. *Council v. Adams County Light & Co.*, P.U.C.I. Case F323, Order 681, P.U.R. 1920E, 381.

Adequacy of service was not shown by showing that under unusually advantageous conditions a sufficient supply of water could be had. *Eddy v. Lewiston Valley Water Co.*, P.U.C.I. Case F409, Order 777, P.U.R. 1921D, 479.

This section does not require maintenance of plainly excessive or obsolete equipment. *In re Boise Artesian Water Co.*, P.U.C.I. Case F504, Order 909, P.U.R. 1931A, 556.

X Extent of demand for service and use thereof by the public is to be considered in determining the reasonableness of and necessity for such service. *In re Oregon Short Line R. Co.*, P.U.C.I. Case F603, Order 1029, P.U.R. 1926E, 364.

Conditions may be such as not to require the keeping of an agency at a railroad station, and at the same time require a caretaker. *In re Northern Pac. R. Co.*, P.U.C.I. Case F643, Order 1085, P.U.R. 1927E, 653.

X It is the duty of the public utilities commission, when an application to discontinue an agency and substitute a caretaker to furnish all substantial service previously furnished, to consider whether the substituted service would be "adequate, efficient, just and reasonable service," in the light of the facts. *In re Application of Union Pac. R. Co. for Leave to*

Ex. #7

3-16-89

P R E F A C E

The agency is a vital part of Burlington Northern. In a sense, the agency is Burlington Northern to many of our customers who may have limited contact with any other company representatives. The agency's role then is doubly important. Not only must it protect the revenues and other vital business interests of Burlington Northern, it must also provide the customer with access to all the service that the company offers. The agency must be ready and able to establish contact with all departments and divisions of the various departments, including Transportation, Marketing, Engineering, Industrial Development and Property Management, the various Accounting divisions and sections, and others who may have information or services that a customer requires. Operating an agency in the manner necessary to protect company revenues and other vital business interests is a complex and exacting task requiring familiarity with the functions, instructions, and responsible officers of all other departments of the company.

This manual is intended to serve as a convenient reference to existing instructions, rules, and regulations applicable to agency operations. While every conceivable procedural detail will not be found, instructions covering the principal matters applicable to the conduct of an agency are covered. Agents and agency supervisory forces are responsible for implementing and enforcing these instructions and for suggesting improvements where necessary.

Volume I makes up the bulk of the manual and contains the specific instructions required for the day-to-day operation of an agency. Revisions will be issued, printed on colored paper, as changes occur. These revision pages will be numbered to correspond with the page number on which the item being revised appears and are to be placed in the manual next to that page number. When the colored sheets become fairly numerous, indicating many revisions, the entire section will be re-issued. Instructions covering some items are still being prepared, and upon completion will be forwarded for insertion in numerical order in the manual.

Volume II is to be used for filing of information circulars which are issued from time to time by various departments. Each department has been assigned a specific reference number as shown in Volume II. Circulars and Information Bulletins as received should be filed in appropriate section as indicated by dividers.

Questions arising about the conduct of an agency that cannot be answered by reference to this manual should be referred to the department involved with the operation in question, or to Manager, Station Services.

**BURLINGTON
NORTHERN**

THIS FORM IS USED FOR ORDERING

EMPTY CARS, MUST SHOW CAR NUMBER
DATE AND TIME WHEN PLACED. IF

ORDER CANCELLED, SHOW DATE AND TIME

A. ORDER NUMBER	ORDER CANCELLED, SHOW DATE AND TIME
B. STATION NAME AND NUMBER	I. DATE AND TIME
C. NUMBER OF CARS WANTED	J. DATE WANTED
D. KIND OF CARS	K. COMMODITY - CLASS
E. WHERE WANTED	L. LENGTH AND SIZE
F. ROUTING	M. DESTINATION
G. SHIPPER	N. NAME OF BN EMPLOYEE RECEIVING REQUEST
H. SHIPPERS AGENT	
O. SPECIAL INSTRUCTIONS: (Protective Service - Tie Downs, Etc.)	

C. SPECIAL INSTRUCTIONS: (Protective Service - Tie Downs, Etc.)

[illegible]

3 BURLINGTON
NORTHERN

STATION		DATE		19	NO.
REPORTED TO CUSTOMER ACCOUNTING CENTER		BILL NO.		BILL DATE	
DATE		19	19		
SHIPPER			CONSIGNEE		
CAR MOVED FROM			CAR MOVED TO		

	A A No.	CAR		NOTIFIED OR PLACED		DEL'D OR RELEASED		AMOUNT	REFUND MADE BY
		INITIAL	NUMBER	DATE	TIME	DATE	TIME		
AS CHARGED									DRAFT NO.
SHOULD BE									DATE
DIFFERENCE REFUND/CANCEL - DEMURRAGE/STORAGE									AMOUNT \$

Authority:

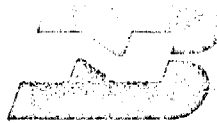
Approved by Director, Customer and Station Accounting

Per _____

Agent a Stevedore

Shipping Order

must be legibly filled in, in ink, in Indelible Pen or in Carbon, and retained by the agent EFFECTIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order.



**BURLINGTON
NORTHERN**

Ex. 7

3-1687.

Shipper's No. _____

Agent's No. _____

SHEET 2

19

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract c, meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western and Illinois Freight Classifications in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to _____

Destination _____ State of _____ County of _____

Delivery Address* _____

(*To be filled in only when shipper desires and governing tariffs provide for delivery thereat.)

Route _____

Delivering Carrier	Car Initial	Car No.
--------------------	-------------	---------

[illegible]

- * the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

Shipper

Por

Permanent postoffice address of shipper

FORM 15217 11-70

10

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

PRINTED IN U.S.A.

Printed in U.S.A.

33 Form 3

Association of
American Railroads
Bureau of Explosives

STATION: YARD INSPECTION

Railroad: Burlington Northern
Location: 119039 Silver Bow Road
Silver Bow, Montana 59750

Inspection Date: July 9, 1985
Agent/Trainmaster: J. Pelletier
Yardmaster:

Conditions observed during time of this inspection:

The Bureau of Explosives' Tariff number BOE-6000-E, publishing the Hazardous Materials Regulations of the Department of Transportation was on file.

This yard handles frequent shipments of hazardous materials including: Sodium Cyanide Solid, Liquefied Petroleum Gas, Corrosive Materials, and Flammable Liquids.

In accordance with § 174.33 of the Department of Transportation Hazardous Materials Regulations, an adequate supply of placards is maintained to replace those that are lost or damaged in transportation.

Train lists were reviewed with no exceptions noted.

A discussion of train placement for placarded rail cars was held with Mr. Pelletier, who demonstrated a working knowledge of the appropriate regulations.

This yard is operated jointly by the Burlington Northern and the Union Pacific.

There were no placarded rail cars available for inspection at the time of this visit.

Copies to:

Mr. C. J. Bryan, Vice President Operations
Mr. J. J. Button, AVP System Safety and Rules
Mr. G. E. Thiel, Superintendent
Mr. J. Pelletier, Agent
Mr. J. E. Southworth, Manager, Field Operations
Mr. J. D. Jarvis, Senior Inspector

J. C. Davis

Inspector

July 13, 1985

Date

BURLINGTON NORTHERN INC.

PRESENTATION FORM FOR LOSS OR DAMAGE CLAIMS

Ex. 7

3-17-89

Name of person to whom claim is presented _____			Date _____		
Name of carrier _____			Claimant _____		
Address _____			Address _____		
City _____	Zone _____	State _____	City _____	Zone _____	State _____

Claimant's Number _____

Carrier's Number _____

Claim for \$ _____ is made for () LOSS () DAMAGE, supported by the documents indicated below:

Original Paid Freight Bill ()	Original Invoice or Certified Copy ()
Original Bill of Lading ()	Other _____

If original Bill of Lading is lost or destroyed, complete this section.
If original Freight Bill is lost or destroyed, complete this section and submit copy.

In presenting this claim covering shipment of _____ shipped by _____
from _____ on Bill of Lading or Waybill dated _____
consigned to _____ at _____ the undersigned is unable
to surrender the original Freight Bill and/or Bill of Lading and hereby guarantees to protect the _____
and any other interested carrier against all costs, expenses or other fees which may result
from payment of this claim without surrender of the original document(s).

If Original Invoice or Certified Copy is not available, complete this section.

Invoiced by _____ Address _____
Date of Invoice _____ Invoice Number _____ Total of Invoice \$ _____
Description of Items Covered by Claim:

Item	Number of Items	Price	Discount	Net Price

Show how claim is determined in this section:

Total Claimed \$ _____

Signature affixed guarantees and certifies the above statements to be correct.

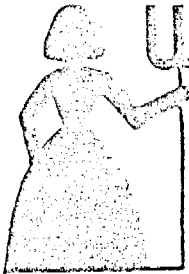
Signature of claimant _____

By _____

3/16/89

HB 626

WIFE Women Involved In Farm Economics



Kay Norenberg
WIFE (Women Involved In Farm Economics)
HB 626 SUPPORT

Mr. Chairman, members of the committee. My name is Kay Norenberg, representing WIFE (Women Involved In Farm Economics).

We would like to go on record in support of HB 626.

We do understand the necessity of some station closures but feel that public testimony should be weighed along with the testimony of shippers in hearings for these closures.

This bill would allow the public some voice in whether their station is closed or not. We feel that theses stations are many times necessary in the community, be it for the convenience or the safety factor, and the community has the right to be heard.

As an example, the closure of stations in the Opheim, Culbertson area leaves a gap of one hundred and fifty miles without a station. This can bring on hardships for shippers in that area.

We would like you to consider what this does to us in the rural areas.

We recommend a do pass.

Thank you!

4—LIVINGSTON ENTERPRISE, Tuesday, August 23, 1988

opinions

Starting to roll

It's been almost two years since the state lightened up on its requirements for railroad freight offices, but the new system seems to be starting to work.

Until the 1987 legislative session, Montana required the railroads to maintain freight offices in every county seat and every town of 1,000 or more population. It caused an unnecessary hardship on the railroads, who wanted to consolidate their freight office operations in fewer locations. At the time the legislature took up the issue, BN had 62 freight agencies in Montana, compared with 16 in Washington, 8 in Wyoming and 6 in North Dakota.

The new law allowed for closure of freight offices, if the railroad could show the Public Service Commission that no major inconvenience or other impact on the shippers and general public would be caused. The PSC has received some of the railroad's applications, held hearings, and granted most of them.

The primary opponents to the closure of the offices, as might be expected, have been railroad union representatives who want to protect the jobs of the freight agents. Only a few shippers and other members of the public have objected.

In mounting their protests, the rail union folks have come up with some pretty thin arguments. One is that the freight agencies need to be maintained because of "livestock kills —" the occasional cow that gets killed by a passing train. Union spokesmen argue that the freight agent needs to be there to record and process the farmer's claim against the railroad — a pretty silly justification to keep an agency open.

Their latest argument is almost as silly — they are beginning to claim the agency should be kept open for safety reasons — so that the agent will be on hand to perform "roll-by" inspections of the trains. It seems when the unions run

out of other job-protection arguments, they often resort to "safety" claims — long on emotion and short on logic.

It makes you wonder how the ranchers of Wyoming or North Dakota get by with so few places to put in a claim when a cow gets killed . . . and how "safe" the trains travelling through those states are, with so few freight agents to "inspect" them.

Anyway, the slow bureaucratic process of earning PSC approval has been underway for several months now. In the meantime, BN sold off the southern line to MRL, so MRL is also applying to close some agencies. Most of the completed closure applications — less than a dozen so far — have been granted, but the PSC has refused a couple of them. More applications are in the mill. It's something that has taken far too long to get going. At least it's moving now, and we can hope the PSC keeps it an objective and expedient process.

BEFORE THE
MONTANA SENATE
HIGHWAYS AND TRANSPORTATION
COMMITTEE

IN SUPPORT OF HB626 by Repr. Whalen _____ March 1989

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 10

DATE 3/16/89

BILL NO. HB 626

TESTIMONY OF JAMES T. MULAR, STATE LEGISLATIVE
DIRECTOR, TRANSPORTATION COMMUNICATIONS UNION
(TCU) formerly the Brotherhood of Railway &
Airline Clerks) 440 Roosevelt Drive, Butte, MT.

Chairman Pavlovich, members of the Committee TCU supports the amendment to Section 69-14-202MCA which defines the Common Law Doctrine of Public Convenience & Necessity (PCN) The 1987 Legislature amended this section relating to maintenance and staffing of railroad facilities. Formerly Montana required RR's doing business in Montana to maintain and staff station facilities in communities of 1,000 inhabitants and at least one in each county. Representative Bradley (Dem. Bolemn) amend this law by striking the population criterion defining public convenience and necessity, and merely inserted the present PCN without definition.

If you will look at the bottom of page one and extending to page two HB 626 defines public convenience and necessity to mean:

"the maintenance and staffing of facilities with equipment and instrumentalities necessary to promote the safety, health, comfort, and convenience of the railroad's patrons, its employees, and the public, which must in all respects be adequate, efficient, just, and reasonable.".....

This amendment is the same as Section 61-302 of the Idaho Code.

I am attaching a copy of that section to this statement, with court citations upholding this law.

HB 626 reflects that a railroad must provide equipment and instrumentalities, and I would like to read into the record what a railroad agency is required to perform. This statement appears in Burlington Northern's PREFACE to their Agents:

" The agency is a VITAL part of Burlington Northern. In a sense, the Agency IS Burlington Northern to many of our customers who may have LIMITED contact with any other company representatives. The Agency role then is DOUBLY important. Not only must it protect the revenues and other vital business interests of Burlington Northern, it must also provide the customer with access to ALL THE SERVICE that the Company offers. The agency must be ready and able to establish contact with all departments and divisions of the various departments, including Transportation, Marketing, Engineering, Industrial Development and Property Management, the various Accounting divisions and sections, and others who may have information or services that a customer requires. Operating an agency in the manner necessary to protect company revenues and other vital business interests is a complex and exacting task requiring familiarity with the functions, instructions and responsible officers of all other departments of the company....

This preface reflects the vital need for agency services in remote areas of Montana. It also complies with the intent of HB 626 which alludes to EQUIPMENT and INSTRUMENTALITIES. A Staffed railroad station has the following equipment to transact business:

1. Radio/Train Crew and Dispatcher Communications, also Track Crew Communications.
2. Local Telephone Service, FAX copiers, limited computer hardware.
3. Safety devices, such as warning flares, dangerous commodity placards, car seals, track warning torpedoes, flagging devices
4. Typewriters, and telemetric devices necessary in executing company reports.

3/16/89

The following Paper Instrumentalities are available to Railroad Customers:

Bills of Lading, Over Short & Damaged Freight Reports, OSD Car Yard Check Reports, Customer Car Order Forms, Demurrage, Records such as average agreements and straight plan demurrage forms, FRA Hazardous Commodity Tariffs explains what to do in a local crisis with hazardous commodities. Seal Record Book, Record Book of animals killed along rail right of way.

HB 626 assures that this EQUIPMENT and INSTRUMENTALITIES remain with the station until the Montana Public Service Commission find otherwise through the Public Hearing Process. It does not require that Station already closed by the Commission will be required to reopen. The amenddment merely defines PCN.

Montana railroads have been gradually removing the above equipment and instrumentalities, reducing local contact, and then asking the PSC to close the agency for lack of work disregarding public safety.

For example, my office has attended every public hearing conducted by the PSC. Whenever we introduced testimony or documents relating to public safety, very little evidentiary weight was given to safety. The Commission merely applied the common law PCN standard which requires that shippers only have standing to oppose station closures. Many local governments opposed station closures since 1987 premised on Local Safety Concerns etc.

For example Montana Rail Link closed its dualized agency of St. Regis and Superior. Testimony reflected that the agent based in Superior had High Frequency Radio capabilities to communicate

with train crews. The Superior St. Regis Line has radio blackouts with Locomotive based radios impairing communications with the train dispatcher. Often times the Superior agent would contact train crews giving them dispatch instructions. Emergency fact situations were entered in the hearing record without any weight to the retention of agency service.

The same scenario appeared in the BN Miles City Closing.

We would like to report to this committee that since the passage of the 1987 legislation eliminating PCN population criterion the following stations have been closed:

MONTANA RAIL LINK was given authority to close:

Darby, Hamilton, Stevensville, Superior, St. Regis,
Thompson Falls, Plains, Paradise, Ronan, Polson, Drummond,
Phillipsburg, Toston, Townsend, Big Timber, Columbus, Alder,
Whitehall, Sheridan, Twin Bridges.

MONTANA RAIL LINK Stations that are still open:

Missoula, Helena, East Helena, Toston, Three Forks,
Harrison, Belgrade, Bozeman, Billings, Laurel.

Total Open MRL Montana Stations ten (10)

BN STATIONS CLOSED BETWEEN APRIL 1987 thru November 1988

Brady, Dutton, Conrad, Valies, Choteau, Power, Big Sandy,
Rudyard, Hingham, Wibaux, Circle, Farivdiew, Miles City.

At total of 13.

BN CLOSURE APPLICATIONS HEARD and awaiting PSC decision:

Chester, Harlem, Chinook, Hysham, Terry, Ophiem, Glentanna,
Richland, Peerless, Scobey, Four Buttes, Plentywood,

Medicine Lake, Reserve, Antelope, Froid, Homestead, Culbert-
son. Total of 17 Fort Benton was denied.

Ex. #70
3/16/87

BN STATIONS THAT ARE STILL OPEN:

Garrison, Huntley, Hardin, Forsyth, Glendive, Sidney, Wolf Point, Glasgow, Malta, Ft. Benton, Havre, Sweet Grass, Cut Bank, Shelby, Browning, Columbia Falls, Eureka, Whitefish, Kalispell, Libby, Great Falls, Stanford, Lewistown. Total Twenty Three (23).

UNION PACIFIC STATIONS 125 Mile operation

Dillon, Silver Bow, Montana

MONTANA WESTERN, 55 mile operation

Butte, and Silver Bow, Montana...

CONCLUSIONS

Montana railroads have closed 32 stations from April 1987

To August 1988 for an average of two stations per month.

There are 17 stations awaiting FSC orders, and only one station closing was denied - Ft. Benton..... This is an alarming withdrawl which ignores the public and denies remote areas of Montana to rail agency services.

HB 626 addresses the concerns of Montana Communities relating to Rail Safety and public need.

Thank you for allowing me to appear before this committee..


JAMES T. MULAR, SLD TCU BUTTE MT

H/BL26

R.R.

61-302. Maintenance of adequate service. — Every ~~public utility~~ shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. [1913, ch. 61, § 12b, p. 247; reen. C.L. 106:45; C.S., § 2412; I.C.A., § 59-302.]

Cross ref. Equal transportation rights guaranteed, Const., Art. 11, § 6.

Cited in: Application of Pacific Tel. & Tel. Co. (1951), 71 Idaho 476, 233 P.2d 1024.

ANALYSIS

Abandonment of service.

Cost of service.

Discrimination.

Efficiency.

Equal facilities.

Negligence.

Rate making.

Right to require service.

Sufficiency of service.

Telephone service.

Warning of danger.

Water service.

Abandonment of Service.

On an application by a railroad to abandon a portion of its service and substitute service of another sort in lieu thereof, the burden of proof rests on the railroad to show that the proposed substitute service would be adequate, efficient, just and reasonable. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Where the total revenue from passenger trains over a certain branch line for eighteen months was \$11,473.80 as against an expense of \$23,063.46, the use of the passenger train service by the public being negligible, and there were adequate and efficient means of transportation over another railroad and by bus service, the public utilities commission erred in denying the railroad's application to discontinue passenger train service and to substitute, in lieu thereof, mixed trains consisting of a passenger car and a baggage car on existing freight trains. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

No fixed rule can be applied in determining whether or not a railroad is entitled to discontinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

The action of the public utilities commission in denying a railroad's right to discontinue passenger trains on a certain branch

line and to substitute in lieu thereof mixed trains consisting of a passenger car and a baggage car on existing freight trains was neither arbitrary nor capricious, although the service was operated at a loss, where a discontinuance would leave the public practically without railroad passenger service and with only a minimum of bus service at a time when the operation of motor vehicles was seriously restricted because of war, and the operation of the railroad's entire system showed a profit. In re Application of Union Pacific R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Cost of Service.

In determining whether patronage justifies expense of operation of passenger trains on a railroad's branch line, it is proper to take into consideration the expense of furnishing passenger service, but that is not the most important question, the controlling question being the necessity and reasonableness of the service to the public. In re Application of Union Pac. R. Co. to Abandon Certain Train Service (1943), 64 Idaho 597, 134 P.2d 1073.

Discrimination.

Railroad company, engaged in the business of common carrier, is bound under the common law to receive and carry, within the class of goods it is engaged in carrying, such goods as are tendered for that purpose, and, in absence of a special contract, to carry them with the full common-law liability of a common carrier. McIntosh v. Oregon R. & Navigation Co. (1909), 17 Idaho 100, 105 P. 66.

Efficiency.

Electric utility was found by commission to be rendering reasonably good service, notwithstanding the unsatisfactory character of its heating service, on the ground that electricity from an economic standpoint is too expensive to be used for heating purposes. (On rehearing) In re Idaho Light & Co., 2 P.U.C.I. 53, P.U.R. 1915A, 2; In re Idaho Light & Co., 2 P.U.C.I. 38.

Equal Facilities.

Contract entered into by railroad company granting to steamboat company the exclusive right to receive and discharge freight and passengers at dock or wharf which was a part of and connected with its depot and station grounds, and which afforded the only means

IDA Ho Code

and facility for approaching the station grounds by means of the water highway, and excluding all competitors of such steamboat company from like or similar privileges at any time or at all, was undue and unreasonable discrimination in favor of one company and against its competitors, which was in violation of Const., Art. 11, § 6. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell* (1912), 22 Idaho 752, 128 P. 565, 43 L.R.A. (n.s.) 965.

Negligence.

Where the conclusion to be drawn from defendant water company's evidence was that the cause of rupture in its water mains could have been a defect in manufacture of the main or damage to the main in installation which reasonable inspection at that time would have revealed and that such condition permitted corrosion to weaken the main permitting the rupture to give rise to a reasonable inference of negligence under the doctrine of *res ipsa loquitur*, the conclusion was in harmony with the duty imposed by statute upon a public utility. *C. C. Anderson Stores Co. v. Boise Water Corp.* (1962), 84 Idaho 355, 372 P.2d 752.

Rate Making.

The public utilities commission has authority to fix rates which are just and equitable, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist* (1914), 26 Idaho 222, 141 P. 1083.

Right to Require Service.

A new district or community may be entitled to receive service from a public utility without guaranteeing an amount of revenue at the usual rates to satisfy the utility. *Walters v. Utah Power & Co.* P.U.C.I. Case F194, Order 601, P.U.R. 1920C, 212.

Public utility will not be required to render service unless such rendering will afford a revenue which will pay the operating expenses and taxes, provide proper depreciation reserve, and afford a fair return on the investment judiciously made in property used, useful, necessary and required in the service of the public under efficient and economical management. In re *Idaho Power Co.* P.U.C.I. Case F449, Order 838, P.U.R. 1922C, 705.

It is a common carrier's duty to furnish such service as will produce the greatest comfort and convenience to the greatest number of the traveling public. In re *Oregon-Washington R. & Co.* P.U.C.I. Case F462, Order 841, P.U.R. 1922D, 155.

A public utility may be required to continue service only so long as the public support warrants such continuance. In re *Colonial Trust Co.* P.U.C.I. Case F660, Order 1124, P.U.R. 1928D, 628.

The refusal of a public utility company to furnish service in any part of a territory in

which an independent company, not a public utility, has entered, cannot be justified, provided public convenience and necessity requires service therein. In re *Darnielle*, P.U.C.I. Case F663, Order 1138, P.U.R. 1928E, 211.

A railroad was entitled to permission to substitute a caretaker for agency service for community on a branch line having 800 voters, where such substitution would not be a material detriment to the community and would lessen the expense and release a telegraph operator for more necessary service. In re *Application of Union Pac. R. Co. for Leave to Discontinue Agency at Montour* (1943), 64 Idaho 529, 134 P.2d 599.

If the service rendered by a railroad is adequate, efficient, just and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and indirectly, on the public by requiring unnecessary and useless expenditures. In re *Application of Union Pac. R. Co. to Abandon Certain Train Service* (1943), 64 Idaho 597, 134 P.2d 1073.

Sufficiency of Service.

Service offered by public utility must be reasonably adequate and efficient and must be furnished at rates which the consumers can reasonably afford to pay. *Council v. Adams County Light & Co.*, P.U.C.I. Case F323, Order 661, P.U.R. 1920E, 381.

Adequacy of service was not shown by showing that under unusually advantageous conditions a sufficient supply of water could be had. *Eddy v. Lewiston Valley Water Co.*, P.U.C.I. Case F409, Order 777, P.U.R. 1921D, 479.

This section does not require maintenance of plainly excessive or obsolete equipment. In re *Hose Artesian Water Co.*, P.U.C.I. Case F504, Order 909, P.U.R. 1931A, 566.

X Extent of demand for service and use thereof by the public is to be considered in determining the reasonableness of and necessity for such service. In re *Oregon Short Line R. Co.* P.U.C.I. Case F603, Order 1029, P.U.R. 1926E, 364.

Conditions may be such as not to require the keeping of an agency at a railroad station, and at the same time require a caretaker. In re *Northern Pac. R. Co.* P.U.C.I. Case F643, Order 1085, P.U.R. 1927E, 653.

X It is the duty of the public utilities commission, when an application to discontinue an agency and substitute a caretaker to furnish all substantial service previously furnished, to consider whether the substituted service would be "adequate, efficient, just and reasonable service," in the light of the facts. In re *Application of Union Pac. R. Co. for Leave to*



LEE R. KERR
ATTORNEY-AT-LAW

TREASURE COUNTY ATTORNEY

TREASURE COUNTY COURTHOUSE
P.O. BOX 72
HYSHAM, MONTANA 59038
342-5546

SEN-11 BUSINESS & INDUSTRY

EXHIBIT NO. 11

DATE 7/16/89

BILL NO. AB626
COPY

FOR YOUR INFORMATION ONLY
NO ACTION REQUIRED
KERR LAW OFFICE
P.O. BOX 72
HYSHAM, MT 59038
406/342-5546

March 9, 1989

Senator Gene Thayer
Capital Station
Helena, MT 59620

RE: House Bill 626, Public Convenience and Necessity Definition

Dear Senator Thayer:

I am deeply concerned about the present efforts of the Burlington Northern Railroad to close the depot and remove the agent from Hysham and elsewhere along the Burlington Northern route. You may recall in the 87 Legislature the Railroad lobby was successful in getting M.C.A. 69-14-202 amended, and modifying it to remove the requirement that a depot and agent be maintained in every county, and replacing it with a public convenience and necessity standard. Unfortunately, the Railroad may have been successful in convincing, to date, the P.S.C. to interpret the public convenience and necessity standard in a very narrow context, which does not allow the local community to adequately protect safety, health, and truly public convenience interests in regard to depot closings and agent terminations.

The legislative problem is the fact that public convenience and necessity is not defined. The Railroad has chose to define public convenience and necessity, not in the ordinary sense or meaning of those terms, but in terms of the absolute need of a local shipper to have an agent present. The Railroad has attempted to meet this definition by providing an 800 number to Glendive, which is made available only to Railroad shippers. This interpretation is a gross disservice to the local communities and completely fails to recognize important health and safety issues along with the convenience of the public at large, not only local shippers.

Hysham, like most communities presently affected by this statute, have only two local people within the Railroad they can look to if they have a problem with the Railroad, the section foreman and the local agent. If the local agent and depot are removed from all rural county seats and communities within Montana, then the only one that remains to address problems in the

Eq. #11
3/16/87

local communities is the section foreman. Typically, the section foreman is doing his job out on the rails and is not in an office or available to answer phone calls regarding problems with the Railroad. Without a local agent and depot, there is no one to call when there are problems with crossing arms, crossing lights or obstructions on the Railroad tracks. Local agents know when trains are coming and can provide information to local authorities. Without an agent, no information will be available. Trains are notorious for starting fires during the summer from hot cars. The Railroad has the primary responsibility to fight and control these fires while they are on their right-of-way. If there is no agent available to contact and not a staffed facility, then the burden will always fall to the county to fight these fires. Stock killings are also a frequent problem with the Railroad. Without a locally staffed facility, the public will have no one locally to turn to for filing a claim or compensation for these stock killings.

Further, removal of depots and agents can have a very negative impact to business development and should properly be considered by the P.S.C. before any decision is made to close a depot or to remove an agent. Once a depot and agent location is lost and it becomes a blind siding, points are often lost when applying for Federal grants. Most important, it must be remembered that this is a one way ticket. Under the statutes, once the P.S.C. grants authority to close a facility and remove staff, there is no mechanism or provision for the facility to be replaced or the staff to be returned upon a change of circumstances. This proposed amended to the statute does not require the facilities stay open or that staff not be removed, but it does take a step in the right direction in allowing a full and fair hearing before the P.S.C. of all important and relevant factors before a decision is made to close a facility or remove personnel.

The unfairness of M.C.A. 69-14-202 can be remedied by H.B. 626 and I strongly urge your support of this Bill.

This simple definitional insertion will clear up and clarify any distortion the Railroad is presently trying to give to public convenience and necessity, and will properly protect Montana citizens and their interests in safe, necessary, and convenient Railway service.

Please resist any amendments or language changes offered by the Railroad since this is an effort to gut the meaning of the necessary language. I hope you can all join in supporting this bill and get the word out on the floor that a message needs to be sent to the Railroad. The Burlington Northern simply wants to stop at the coal mines and blow its whistle through the rest of the state, without concern to its local responsibilities, including safety, health, and convenience of the public at large regarding use of the Railroad.

Ex. #11

3/16/89

I realize this Legislature may have a mandate of "pro-business". However, this issue is not a pro or an anti-business issue. This is simply a matter of requiring Burlington Northern, a quasi-utility, to provide basic essential services and live up to its obligation to the citizens of this state.

If you need any additional information, please don't hesitate to contact my office.

Sincerely,

Lee R. Kerr
Treasure County Attorney
Director for Treasure Co.
Custer Country Tourism
Region Board of
Directors
President, Hysham Chamber
of Commerce

LRK/df

3/11/19

DATE: _____
Business & Industry _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Garry H. Huden	Intermountain Mortgage Co - Billings	HB 652		X
ALAN WIENER	HB 652 - ESCROW INTEREST	HB 652	X	
STEVE GROSSE	WESTERN FEDERAL SAVINGS	HB 652		X
Terry Minnow	MT Fed of State Employees	HB 719	X	
Don Judge	MT STATE AFL-CIO	HB 719	X	
CHIP EDMANN	MT League For Hist	HB 652		X
Nisa Blanford	Lee Adibek	HB 719		
JAMES T. MILLAR	MOIST JOINT RAIL LABORERS COUNCIL	HB 626	X	
21 Kuntz	Mont By Lab	HB 652	X	
Ed McLaughlin	Valley Bank	HB 652		
Tom Hopgood	Mont Assoc Rec Hous	SB 652		✓
Ed Murray	Mont. Rail Link	HB 626		✓
Ed Kuntz	Burlington Northern	HB 626		✓
Wm. T. West	UTU	HB 626	X	
Gene Branderlie	Self	HB 652		✓
MIKE MCKEE	FIRST FEDERAL SAV - MISSOIA	HB 652		X
Les Berman	BWRR	626		X
Wm. Johnson	Montana Grange	652		X
Ed Ham	MLCF	652	X	
King	Kulipell	652		X
Sam Stewley	Kulipell	652		X

(Please leave prepared statement with Secretary)

any contracting out. He said the workers' compensation reorganization bill, which was hopefully going to pass the House, allowed for contracting out some of that division's services. He said he felt that was really needed, because the average case load in the workers' compensation division, for claims service, was about 300 claims.

Amendments and Votes: None

Recommendation and Vote: Senator Noble made a motion HB 719 BE NOT CONCURRED IN. Senator Hager seconded the motion. The motion Carried, with Senator Lynch, Senator Williams, and Senator Weeding opposing. Senator Thayer carried HB 719 on the Senate floor.

DISPOSITION OF HOUSE BILL 626

Discussion: Chairman Thayer said he thought the bill brought in new, extraneous language, which dealt with public convenience and necessity. He said the language didn't fit, and tried to enforce something through people who had never had this responsibility, and were not trained to do this line of work.

Senator Lynch said he felt all the bill did, was allow further testimony when there were hearings. He said he had spoken to several Senators in the agriculture business, and it seemed the bill simply allowed more testimony. He said he couldn't see anything wrong with public participation.

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion HB 626 BE CONCURRED IN. Senator Hager seconded the motion. Three Senators voted in favor of the motion, and Senator Noble, Senator Williams, Senator Hager, Senator McLane, and Senator Thayer opposed. The motion failed.

Recommendation and Vote: Senator Lynch moved to reverse the motion to DO NOT CONCUR IN HB 719. The motion Carried, with Senator Lynch, Senator Boylan, and Senator Weeding voting no. Senator Lynch requested a minority report. Senator Thayer carried the bill on the Senate floor.

DISPOSITION OF HOUSE BILL 652

Discussion: Senator Hager said if a \$300 minimum balance was going to be kept in an escrow account, that was

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/17/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>			✓
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>			✓
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

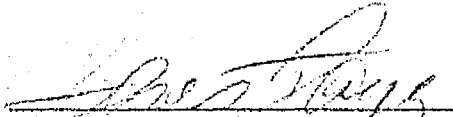
SENATE STANDING COMMITTEE REPORT

March 20, 1989

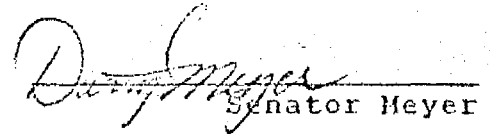
MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 626 (third reading copy -- blue), respectfully report that HB 626 be not concurred in.

Sponsor: Whalen (Thayer)



Senator Thayer

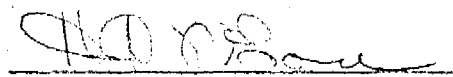


Senator Meyer

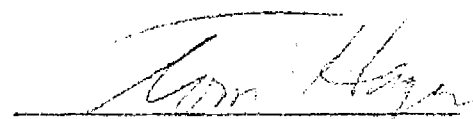


Senator Noble

Senator Williams

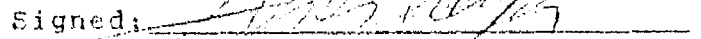


Senator McLane



Senator Hager

MAJORITY REPORT
BE NOT CONCURRED IN

Signed: 

Gene Thayer, Chairman

41.0.189
3/20/89
3:06 p.m.

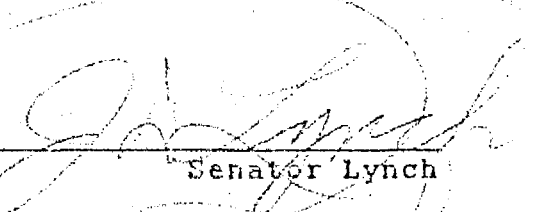
SENATE STANDING COMMITTEE REPORT

March 20, 1989

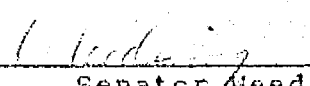
MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 626 (third reading copy -- blue), respectfully report that HB 626 be concurred in.

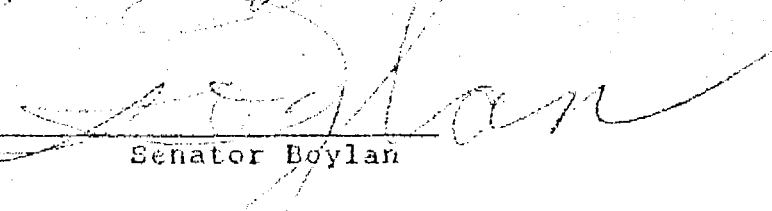
Sponsor: Whalen (Lynch)



Senator Lynch



Senator Weeding



Senator Boylan

MINORITY REPORT
BE CONCURRED IN